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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 192.

JOHN J. ALLEN, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

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Statement of the Case.

FEES OF A COMMISSIONER OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

The facts as found by the court below are as follows:

I.

The claimant, John J. Allen, was a commissioner of the circuit court of the United States for the eastern district of New York from February 1, 1886, to January 20, 1892, qualified and acting as such. He was also chief supervisor of elections for the district, acting as such.

II.

During said period he performed certain services in criminal proceedings and in cases heard and decided, and made up accounts for same, duly verified, which were presented to the circuit court of the United States for approval.

The court declined to make the usual order of approval, but made an order which, after reciting the proper presentation, said:

"And it appearing to the satisfaction of the court by said oath that the services herein charged for have been necessarily and actually performed, and no item of said account having been objected to by said United States district attorney, who appears for the Government in the matter of the approval of said account, and there being therefore no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the United States Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant;

"It is ordered that the said account be, and the same hereby is, approved to the above extent, subject to the revision aforesaid."

The accounts covering items 1 to 17 in Finding III were made and presented for payment some time subsequent to the periods to which they relate and contained no charges besides those items, and none of the fees claimed in those items were charged in any other account presented to the accounting officers of the Treasury Department for payment. Items 18 to 24 were contained in accounts paid in part, payment of these items 18 to 24 being refused.

III.

1. For drawing complaints of affiants in various criminal cases for offenses against the laws of the United States, 3,915 folios, at 20 cents per folio, 15 cents per folio having been charged and allowed by the accounting officers, 5 cents per folio now claimed.. $195.75

These services were rendered during the period February 1, 1886, to June 30, 1889.

Of said complaints 162, consisting of 367 folios, were charged for crimes of a general character not covered by chapter 7 of the title "Crimes," for which the amount claimed is $18.35

The remainder of said complaints charged offenses under said title and chapter, and warrants, if issued, were never served, because inquiry developed no offense had been committed.

2. For drawing jurats to 2,284 complaints of affiants charging offenses against the laws of the United States $342.60

Ninety-two of said complaints charged crimes of a general nature not included in chapter 7, title "Crimes," and the amounts charged for jurats thereon is..... 13.80

All the remainder of said complaints charged offenses under said title and chapter. Warrants, if issued thereon, were never served. No arrests were made because inquiry developed the fact that no offense had been committed.

Respecting items 1 and 2, claimant's former accounts for services in the cases referred to were made up at the rates then uniformly fixed and were settled and paid in full.

3. For reducing testimony of witnesses to writing in various cases heard and decided, 3,370 folios, at 20 cents per folio.....	$674.00
4. For filing 175 separate depositions of witnesses in various cases heard and decided at 10 cents each.....	17.50
5. For services in 110 criminal cases arising under chapter 7 of the title "Crimes," the fee prescribed by section 1986, Revised Statutes, $10 for each case.....	$1,100.00
Upon which claimant has received detailed fees amounting to	810.40
Balance claimed	$289.60

Arrests were made in each of the 110 cases, and the defendants were brought before the commissioner and the cases duly heard and decided.

6. For services in criminal cases where the fees are charged under sections 828 and 847, Revised Statutes, and not included by oversight in former accounts settled by the accounting officers	$44.85
7. Withdrawn by claimant.	
8. For drawing affidavits of supervisors of election and special deputy marshals, verifying the services rendered them in connection with the congressional election of 1886, the same being for verification of their accounts for compensation claimed, 1 folio each, 1,944 folios, at 15 cents per folio.....	291.60

9. For administering oaths to supervisors and special deputy marshals as to services aforesaid at 10 cents each..... 97.20
10. For drawing jurats or certificates to above oaths upon the affidavits aforesaid, 1 folio each, 1,944 folios, at 15 cents per folio.... 291.60

Respecting items 8, 9, and 10, each one of the officers whose affidavit is charged for appeared before claimant, who drew his affidavit as to his services, administered the oath, and added the usual jurat.

The affidavits in question were required by the Department of Justice.

11. For certifying complaints in various criminal proceedings for violations of the elective franchise, with the records pertaining thereto, in connection with the congressional elections of 1886, 1888, and 1890, for transmittal to the chief supervisor of elections, to be filed by him as records of his office, one folio in each case, 2,607 folios, at 15 cents per folio..... $391.00

The charges under consideration in all of said proceedings were those under chapter 7 of the title "Crimes." The claimant was at the same time the commissioner who certified and the chief supervisor of elections to whom he certified said complaints.

12. Same services as in item 8 above for the congressional election of 1888, 1 folio each, 3,632 folios, at 15 cents per folio..... $544.80
13. Same services as in item 9 above for the congressional election of 1888 at 10 cents each 181.60

14. Same services as in item 10 above for the congressional election of 1888, 1 folio each, 3,632 folios, at 15 cents per folio..... 544.80
15. Same services as in item 8 above for the congressional election of 1890, one folio each, 5,498 folios, at 15 cents per folio.... 824.70
16. Same services as in item 9 above for the congressional election of 1890 at 10 cents each 274.90
17. Same services as in item 10 above for the congressional election in 1890, one folio each, 5,498 folios, at 15 cents per folio.... 824.70

Respecting items 12 to 17, each one of the officers whose affidavit is charged for appeared before claimant, who drew his affidavit as to his services, administered the oath, and added the usual jurat. The affidavits in question were required by the Department of Justice, and the general form of the affidavit in question was submitted to and approved by the Department of Justice.

The fees in items 1 to 17 are not balances unpaid upon accounts presented and settled by the accounting officers. They are fees not previously charged in any former account.

18. For issuing warrants of commitment of defendants to jail in default of bail at $1 each and entering return of marshal, one folio, at 15 cents per folio..... $3.45
19. For hearing and deciding on criminal charges in case United States *vs.* A. Ennis, where the proceedings consisted of taking testimony and taking bail, 1 day, $5 per day 5.00

20. For filing and entering 2,180 separate complaints and warrants of arrest issued for violation of the election laws in connection with the congressional elections of 1888 and 1890, where the warrants were returned unexecuted by the marshal at 10 cents each.. 218.00

Services were rendered in civil-rights proceedings, but not in cases, and this item is disallowed.

21. For making certificate to copy of process in various cases where defendants were held for court, 2 folios each, at 15 cents per folio $1.65

No statute or rule of court shown.

22. Withdrawn by claimant.

23. For drawing depositions for complaints in various cases of illegal registration, 4 folios in each case, 20 cents per folio; oath to affiant, 10 cents; drawing jurat to same, 15 cents, and filing complaints, 10 cents each. $742.20

Services charged were in civil-rights proceedings. No warrant issued as the result of scrutiny of lists of voters by commissioner and inquiries at residences.

24. For drawing jurats or certificates to acknowledgments of defendants and sureties to bail bonds, 1 folio each, at 15 cents per folio (acknowledgment paid for)..... $3.20

IV.

The court finds upon the defendant's counter-claim that the claimant in his former accounts (which are the basis of his counter-claim) made certain detail fees, and charged for drawing and filing complaints, and, where warrants were issued, entering return of the marshal on such warrants, amounting to $3,120.

The complaints all charged offenses against various defendants for violations of the provisions of chapter 7 of title "Crimes," upon which a number of warrants were issued—how many does not appear—but no arrests were made in any instance and no execution of said warrants was effected. In instances warrants were not issued, but where issued were not served because inquiry developed that no offense had been committed. The accounts presented by the claimant for said services amounted to the sum of $3,120, which said sum was allowed and paid the claimant by the accounting officers by mistake and in pursuance of the then practice of the accounting officers to allow detail fees in proceedings of that character. This practice was afterwards discontinued and detail fees disallowed except in cases of arrest, and statutory fees were allowed in all cases of arrest.

The amount counterclaimed is made up of charges for services rendered during the following periods, allowed, and paid upon settlement of claimant's accounts for those periods by the accounting officers, as per Treasury reports specified, the accounts for each period being separate and distinct as follows:

Account for period July 1 to December 31, 1886, as per Treasury report 106,861.....	$662.15
Account for period of July 1, 1888, to June 30, 1889, as per Treasury report 131,783.....	1,087.80
Account for period July 1, 1890, to June 30, 1891, as per Treasury report 133,451.....	1,029.10
Account for period July 1, 1892, to December 31, 1892, as per Treasury report 134,704....	341.00

In settling the accounts in the counter-claim the charges were suspended by the accounting officers for explanations, which were furnished.

No disallowed balance in any account to which the counter-claim relates is sued for herein.

Conclusions of Law.

Upon the foregoing findings of fact the court decides as conclusions of law:

(1.) That the claimant is entitled to recover judgment on items 1, for $18.35; 2, for $13.80; 5, for $289.60; 3, 4, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, and 18, in the sum total of four thousand nine hundred and forty dollars and sixty-five cents ($4,937.45), all other items and charges being disallowed.

(2.) That the defendants are entitled to recover judgment on their counter-claim because of charges illegally and by mistake paid to him on the claim of the plaintiff in the presentation of his former accounts, in the sum of three thousand one hundred and twenty dollars ($3,120).

(3.) That on the whole case the claimant is entitled to recover judgment in the sum of one thousand eight hundred and seventeen dollars and forty-five cents ($1,817.45).

Judgment was entered in accordance with said findings of fact and conclusions of law.

Errors of Law.

Claimant assigns as errors of law.

First. The conclusions of law made by said court in disallowing part of items 1 and 2 and all items 11, 20, and 23.

Second. The refusal of said court to render judgment in favor of the claimant for the amounts claimed in said items.

Third. The allowance of the counter-claim filed by the defendant.

ARGUMENT.

Item 1. The facts show that the claimant, as commissioner of the circuit court of the United States for the eastern district of New York, performed certain services in drawing complaints of affiants in various criminal cases from February 1, 1886, to June 30, 1889, alleging offenses against the laws of the United States, and in his quarterly accounts for said services he charges at the rate of 15 cents per folio, which were approved by the court, presented to the accounting officers of the Treasury, and paid.

Subsequently, on May 11, 1891, this court decided that the legal charge for drawing the complaint, as "for taking and certifying depositions to file" under section 847, Revised Statutes, was 20 cents per folio.

U. S. *vs.* Ewing, 140 U. S., 142, item 4.
U. S. *vs.* Barber, 140 U. S., 164, item 1.

Following this construction of the fee bill (section 847), the claimant made up a *new* account covering the services for the aforesaid period and charged the additional 5 cents per folio, which was approved by the court, as required by law, and presented to the accounting officers of the Treasury for payment, and payment was refused; whereupon the amount was included in this suit.

The court below found that part of these complaints, 162 containing 367 folios, charged crimes of a general character, and for these allowed the additional fee, amounting to $18.35.

The court below found that the remainder of the complaints, containing 3,548 folios, charged offenses under title LXX, chapter 7, Crimes, and rejected the fees, amounting to the sum of $177.40.

Item 2. The services embraced in this item were for drawing jurats to 2,284 complaints of affiants charging offenses

against the laws of the United States, one folio each, at 15 cents per folio, $342.60.

The court below found that 92 of said complaints charged crimes of a general nature and allowed the jurats in these, amounting to the sum of $13.80.

The court below found that the remainder of said complaints charged offenses under title LXX, chapter 7, Crimes, and rejected the fees, amounting to the sum of $328.80.

The court further found that "claimant's former accounts for services in the cases referred to in items 1 and 2 were made up at the rates then uniformly fixed and were settled and paid in full." These uniform rates as fixed by the accounting officers of the Treasury were only 15 cents per folio for drawing the complaint and no fee for drawing the jurat or certificate to the oath to the complaint, and the claimant, when these services were rendered, from February 1, 1886, to June 30, 1889, only charged 15 cents per folio for drawing the complaint and made no charge for drawing the jurat.

Subsequently, on May 11, 1891, this court decided that a commissioner was entitled to the fee of 15 cents per folio for drawing the jurat to the complaint.

U. S. *vs.* McDermott, 140 U. S., 151, item 1 (*a*).
U. S. *vs.* Barber, 148 U. S., 164, item 1 (*a*)

Following this construction of the fee bill (sections 828 and 847, Revised Statutes), which was *new* law, the claimant made up a *new* account covering the services for the aforesaid period and charged the fee of 15 cents for drawing the jurats to the complaints, which was approved by the court, as required by law, and presented to the accounting officers of the Treasury for payment, and payment was refused; whereupon the amount was included in this suit.

No fee of $10 was charged or paid in any of these cases.

From this record it will be seen that the original accounts for drawing the complaints in all the aforesaid cases were

settled and paid without any question as to whether the offenses were of a general character or were under title LXX, chapter 7, Crimes. The record further shows (p. 8) that it was the uniform practice of the accounting officers of the Treasury to allow the fee of 15 cents per folio for drawing complaints *in all criminal cases,* and made no distinction between offenses of a general character and offenses under title LXX, chapter 7, Crimes.

It will therefore be seen that this distinction and objection were made for the first time in the court below in this case. The question therefore for this court to determine is whether a commissioner of the circuit court of the United States, where these services were performed, was legally entitled to the fees authorized by sections 828 and 847, Revised Statutes, as construed by this court in the Ewing, McDermott, and Barber cases cited above.

The contention of the claimant is that sections 828 and 847, Revised Statutes, provide specific fees for specific services *in all criminal cases,* and when a specific service has been performed in good faith he is entitled to the specific fee authorized by the fee bill, irrespective of what subsequent service may be performed in the progress of hearing and deciding on criminal charges.

Instituting a criminal proceeding before a commissioner is defined by this court as follows:

> *"A criminal cause is begun in a commissioner's office by the filing of a complaint and the issuing of a warrant."*
> U. S. *vs.* Van Durzee, 140 U. S., 169, item 5.

Then *after* the prosecution has been thus instituted, the statute requires commissioners to hear and decide on criminal charges and to hold or discharge the defendant.

The institution of the prosecution is the *first* act; the examination and the holding or discharging of the defendant are subsequent distinct acts.

These latter two acts or classes of services may be, and

frequently are, performed by different commissioners, especially where the warrant is made returnable before another or nearer commissioner.

The courts recognize the two distinct classes of services of commissioners—the *judicial,* referred to in section 1986, and the *clerical* and *ministerial,* referred to in sections 828 and 847—and rest compensation for each upon a specific fee.

In U. S. *vs.* Jones (134 U. S., 483) this court said:

"For acts purely clerical and ministerial, such as administering oaths, taking acknowledgments, taking and certifying depositions to file, specific fees are provided, and for issuing writs or warrants or other service he has the same compensation as is allowed to clerks for like services.

"For acts not merely clerical but which are performed by the commissioner in his judicial capacity his fees are regulated on the basis of per diem compensation."

In U. S. *vs.* Patterson (150 U. S., 67), the foregoing is quoted as showing that the "hearing and deciding," for which $5 per day is allowed, "were clearly not of a clerical but of a judicial nature."

It is beyond the bounds of reason to suppose that the law intended that the commissioner who made the preliminary investigation, who examined and took the depositions of the complaining witnesses, who prepared the warrant and saw that it was placed in the hands of the marshal, or who selected and appointed a special officer to execute it should depend for *his compensation for all the labor, time, and attention required upon the chance, first, of an arrest, and, second, of the prisoner being brought before him rather than some other commissioner or magistrate.*

This contention is sustained by the uniform practice of the Treasury Department, as shown by the record in this case (R., p. 8), and decisions of the Comptrollers of the Treasury Department. On December 11, 1891, Comptroller Mathews, in adjusting the account of W. W. Gilbert, a commissioner of the circuit court of the United States for the

northern district of New York, per settlement report, 132,990 (records of Comptroller's office), decided as follows:

"Item 7. When warrant issued for violation of election laws is not executed, the commissioner is entitled only to the usual fee for issuing, filing and entering return of warrant. The excess is disallowed."

Subsequently, in adjusting the account of the same commissioner of December 31, 1892, per settlement report, 143,-518 (records of Comptroller's office), the same Comptroller decided:

"Item 9. In cases under election laws, if defendant is not arrested and tried, the commissioner is entitled only to fees for complaint and process. The excess is disallowed."

A fee of $10 was charged in each one of these cases.

It appears that this ruling was followed by subsequent Comptrollers up to the time of filing this suit. No decision can be found to the contrary,

Also the following authorities:

Patterson *vs.* U. S., 21 Ct. Cls., 322.
Wallace *vs.* U. S., 25 Ct. Cls., 519.

In the latter case the Department of Justice had issued instructions to commissioners not to charge in their accounts for drawing complaints and issuing warrants and subpœnas until the process had been returned. The process not having been returned, the court entered judgment for claimant for the fees for said services.

Faucett *vs.* U. S., 26 Ct. Cls., 159, items 9 and 10.
U. S. *vs.* Ewing, 140 U. S., 142.
U. S. *vs.* McDermott, 140 U. S., 151.
U. S. *vs.* Barber, 140 U. S., 164.
U. S. *vs.* Julian, 162 U. S., 324.

The facts in this case (R., p. 8) show that the claimant issued warrants of arrest on these complaints, but they were

not executed by the marshal and there was no arrest and examination.

In construing this section this court held in the Southworth case (151 U. S., 185):

"For it cannot be that a commissioner guarantees to the Government the sufficiency of the complaint filed before him, and is entitled to no compensation, if it be found defective. If he has proceeded in good faith to render services to the Government, acting upon a complaint manifestly intended to charge an offense, and, the defendant having been arrested upon such complaint, holding an examination, and rendering a judicial decision thereupon,—in the language of the statute" (section 847, Revised Statutes) "'hearing and deciding on criminal charges,' he is entitled to compensation. * * * It, of course, cannot be tolerated, in the absence of express language, that compensation is to be paid when the defendant is bound over for trial and not when he is discharged. That when the defendant is arrested and examination held there is a 'criminal case' is clear. That unless there be an arrest and examination, there is no 'case' within the meaning of section 1986 is equally clear. The amount allowed, ten dollars, precludes the idea that the mere filing of a complaint and issue of a warrant is sufficient. And the language of the Statute is plain. The allowance is for his services in each case, inclusive of all services incident to the arrest and examination.'"

It was on this theory and construction of the law that the claimant here charged only the specific fees provided by sections 828 and 847, Revised Statutes, for the specific services performed in *any* criminal case where there was no arrest and examination, and his first accounts for said services were settled and paid by the accounting officers of the Treasury in accordance with said theory and construction after full explanation and examination (R., pp. 8, 10).

Neither the claimant nor the Treasury Department made any distinction in the character of the offenses charged in the complaints, whether they were of a general nature or under title LXX, chapter 7, Crimes, since *all were crimes*

against the laws of the United States, and it was the duty of the commissioner to issue these warrants on complaints properly made before him, and there is not a particle of evidence in this record to prove that these complaints were improperly made or that the services were not actually and necessarily performed in good faith.

Section 1014, Revised Statutes, provides:

"For *any crime or offense* against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense."

In construing this section Justice Field said:

"The commissioner is made a magistrate of the Government, exercising functions of the highest importance to the administration of justice. He is an examining and committing magistrate, *bound to hear all complaints of the commission of any public offense against the laws of the United States in his district,* to cause the offender to be arrested, to examine into the matters charged, and to commit for trial, or to discharge from arrest, according as the evidence fails or tends to support the accusation. For the faithful discharge of his duty, in these particulars, he alone is accountable. He has no divided responsibility with any other officer of the Government, nor is he subject to any other's control."

U. S. *vs.* Schumann, 2 Abbott, U. S. Reports, 523.
U. S. *vs.* Scroggins, 3 Woods, 532.

Section 1982, Revised Statutes, provides:

"The district attorneys, marshals and deputy marshals, the commissioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the Presi-

dent, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the title 'Crimes,' and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense."

It will thus be seen that the law makes no class distinction between the crimes to be prosecuted before a commissioner of the circuit court. The first step in such prosecution is the drawing of the complaint and verifying the same before the commissioner charging an offense against the laws of the United States. The second is the issuing of a warrant and placing it in the hands of the marshal for execution. If the United States attorney should stop the prosecution at this stage of the proceedings, as in this case, because the warrants were not executed by the marshal, is the commissioner to receive no compensation for his services already performed, when the fees are specifically provided for said services by sections 828 and 847, Revised Statutes, and authorized by this court in several cases?

U. S. *vs.* Ewing, 140 U. S., 142.
U. S. *vs.* McDermott, 140 U. S., 151.
U. S. *vs.* Barber, 140 U. S., 164, 177.
U. S. *vs.* Allred, 155 U. S., 591.
U. S. *vs.* Julian, 162 U. S., 324.

It is confidently asserted that no practice of the Treasury Department nor any decision of the courts can be cited to sustain such an unjust and unreasonable conclusion.

For the first time, and in this case, it is decided by the court below that in prosecutions under section 1982, Revised Statutes, a commissioner is not entitled to any fees, unless there was an arrest and examination and the offender imprisoned or bailed, and then the only fee was ten dollars in each case, as provided by section 1986, Revised Statutes.

That section reads as follows:

"The district attorneys, marshals, their deputies, and the clerks of the courts of the United States and territorial courts shall be paid for their services, in cases under the foregoing provisions" (section 1982, Revised Statutes), "the same fees as are allowed to them for like services in other cases; and where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination."

It is conceded by claimant, and so decided by this court in the Southworth case (151 U. S., 185), that under this section a fee of ten dollars can only be charged and allowed in a criminal case under title LXX, chapter 7, Crimes, when there was an arrest and examination and the case finally disposed of by committing or discharging the defendant. The object of the law was to give the commissioner a maximum fee of ten dollars in this class of criminal charges to cover all services where there was an *arrest and examination* in lieu of the fees provided for each service performed under sections 828 and 847, Revised Statutes, where the fees might be less or more, depending on the number of cases finally disposed of on each day. This was so decided in the Hazeltine case (26 Ct. Cls., 424).

It was the clear and manifest intention of Congress in passing this law to give a commissioner ten dollars in the prosecution of offenses against the election laws *when there was an arrest and examination and the case finally disposed of*. The theory and necessity for this legislation arose, no doubt, from the fact that under the old fee bill section 847, Revised Statutes, a commissioner was entitled to only one per diem at five dollars in a day for hearing and deciding on criminal charges, no matter how many cases were heard and decided on the same day, so that this per diem could be charged in only *one* of the cases heard that day, while in the others only the detail fees for the complaint, warrant, and taking bail or commitment could be charged, amount-

ing to but a few dollars. Section 1986 intended to change this and give the commissioner a fee of ten dollars in each case heard and decided. A controlling reason for this legislation was that Congress knew from experience that during the heat of election campaigns there would doubtless be numerous prosecutions for alleged violation of the election laws and many arrests and examinations of defendants by a commissioner on the same day, and in order to secure prompt final disposition of these cases and to avoid the possible temptation to continue the cases to earn a fair per diem in each under section 847, Revised Statutes, Congress sought to remove this temptation, with its possible injustice to the person arrested, by providing a fee of ten dollars in each case of *arrest and examination* so that the charge could be speedily disposed of.

The spirit and letter of the statutes are opposed to any construction which would cut off or reduce commissioner's fees for services in enforcing the law in question.

Not only was there no intent to belittle the office of the commissioners who were to enforce this law by limiting or reducing fees, but, on the contrary, the statute itself manifests a *positive intention to enlarge the importance and power of the office.*

Section 1984 authorized commissioners, in enforcing this law, to ignore the United States marshals and appoint, to execute their warrants, officers of their own selection having power to call to their aid the citizens, militia, and even the army and naval forces.

Section 1984 extended the authority of the commissioner's warrant beyond his district, through other districts of the State.

Section 1987 empowered commissioners, in these cases, to fix the fees of their officers for attending examinations, keeping prisoners, etc.

Section 1987 also gave the commissioners' officers *five* dollars for executing a warrant instead of the *two* dollars allowed a marshal by section 829.

These provisions greatly enlarged the commissioners' functions and the scope of their official powers and duties in this class of cases, and increased very largely their responsibilities.

It is therefore both unreasonable and incompatible with the evident purpose and spirit of the law to suppose that, in adding these provisions, there was any intention to cut their fees or take from them any benefits or advantages which they already possessed in ordinary criminal matters.

NO REPEAL OF OLD FEE BILL.

Apart from the foregoing, it is contended here on behalf of claimant that section 1986, Revised Statutes, did not repeal sections 828 and 847, Revised Statutes, except to the extent indicated above, either by express language or by implication, and that the provisions of sections 828 and 847, Revised Statutes, providing fees for services prior to the arrest and examination remained in full force and effect.

The reason is obvious, and fully set forth by this court in the Southworth case (151 U. S., 185) in the following words:

"For it cannot be that a commissioner guarantees to the Government the sufficiency of the complaint filed before him, and is entitled to no compensation if it be found defective. If he has proceeded in good faith to render services to the Government, acting upon a complaint manifestly intended to charge an offense, and, the defendant having been arrested upon such a complaint, holding an examination, and rendering a judicial decision thereupon,—in the language of the statute, 'hearing and deciding on criminal charges,' he is entitled to compensation. * * * It, of course, cannot be tolerated in the absence of express language, that compensation is to be paid when the defendant is bound over for trial and not when he is discharged."

This construction of the fee bill applies with equal force to the compensation herein claimed for services rendered in

good faith in drawing the complaints and issuing warrants of arrest which were not executed by the marshal. The commissioner is a judicial officer and the marshal is an executive officer, each with separate and defined duties. Neither is responsible to the other for his services performed in good faith, and there is no evidence in this record of the want of good faith on the part of either. Does a fair and legal construction of section 1986, Revised Statutes, deprive the commissioner of compensation for services rendered in good faith under sections 828, 847, and 1982, Revised Statutes, because the warrant was not executed by the marshal any more than if the defendant was discharged and not bound over?

In holding that it does the court below committed a fatal error of law, which it is confidently believed this court will correct in this appeal.

REPEAL BY IMPLICATION NOT FAVORED.

Unless absolutely irreconcilable, effect should be given to both section 1986 and sections 828 and 847, the unrepealed fee bill. This principle has been repeatedly affirmed.

"It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore to displace the prior statute."

Frost *vs.* Wenie, 157 U. S., 46.
U. S. *vs.* Healey, 160 U. S., 147.

Item 11. The services here performed are shown by the findings of fact (R., p. 9) and statement of case herein.

The findings of fact show that the original complaints, with the records pertaining thereto, were certified, and not copies, as seems to be erroneously intimated by the court below in its opinion. No copies were in fact made and no charge is here made for any copies whatsoever. The law required originals to be certified, and the claimant has strictly executed said law, which is as follows:

Section 2027, Revised Statutes.

"All United States marshals and commissioners who in any judicial district perform any duties under the preceding provisions relating to, concerning, or affecting the election of Representatives or Delegates in the Congress of the United States, from time to time, and with all due diligence, shall forward to the chief supervisor in and for their judicial district, all complaints, examinations and records pertaining thereto, and all oaths of office by them administered to any supervisor of election or special deputy marshal, in order that the same may be properly preserved and filed."

As this law directed that these complaints and records should be "properly preserved and filed" by the chief supervisor, they became thereby important records and the property of the United States. This law further directed that these complaints and records of the commissioner's office should be *officially* forwarded to the chief supervisor of election in order that he could ascertain thereby their official character. It was not the intention of this law that the commissioner should bundle these complaints, etc., in a bag or basket and dump them into the office of the chief supervisor, but that the complaint, with its records and papers in each case, should be put together and covered by a single authenticating certificate showing their official character and identifying them for the information and guidance of all officials or others having occasion at any time to refer to these records in complying with the requirements of section 2027, Revised Statutes, *no matter who held the office.* If sent without au-

thenticating certificates, there would be no official evidence to prove their identity or show their official character as "complaints, examinations, and records," or that they were the particular records embraced by section 2027 and transmitted under that statute, which permits the chief supervisor to properly preserve and file only certain specified records and examinations forwarded under that section. Their official identification required a certificate from the only official having knowledge of their character, namely, the commissioner sending them. *Such certificate and authentication is a condition precedent to the filing and preservation of the papers* for all time and all purposes.

An objection in the court below to this item was that the statute limits the fee in these cases to ten dollars, which includes this charge.

Section 2027 imposes upon commissioners a duty which is no part of the prosecution of a case by or before them. It is not incident to the prosecution or to the proceedings before the commissioner. The criminal proceeding is ended when the commissioner discharges the accused or holds him for trial and bails or commits him. The transmission of the papers to the chief supervisor is to be made afterward, but at no specified time. The papers are not sent to the district attorney to aid him in prosecuting, but to a record officer "to be preserved." Their transmission is therefore an extrajudicial or ministerial duty imposed by a special law which is no part of the criminal code.

That this service is independent of and distinct from the services incident to the arrest and examination, and is not covered by the fee of ten dollars given by section 1986, is clearly shown by the statutes as first enacted.

Section 1986, giving the ten-dollar fee, was enacted April 9, 1866 (14 Stat., 29, sec. 7).

Section 2027 was enacted February 28, 1871 (16 Stat., 437).

The services required by section 2027 were not required or

contemplated when section 1986 was enacted, and therefore were not included in the services for which the ten-dollar fee was provided.

The conclusion, therefore, must follow that the fees here claimed are allowable under sections 828 and 847, Revised Statutes.

As this certificate contained only one folio in each case, the claimant only charged a fee of fifteen cents for each certificate. The service and fee are provided for and authorized by the eighth clause of section 828 and the seventh clause of section 847, Revised Statutes, and is allowed in item 10 (R., p. 8), from which no appeal has been taken. These certificates were the same in character and form as those allowed in the suit by the same claimant in the Court of Claims, where judgment was rendered sustaining the legality of this very charge on June 27, 1892, and no appeal was taken by the Attorney General (Allen *vs.* U. S., No. 16,333), as shown by certified copy of findings of fact and conclusion of law, Finding II, item 5, hereto annexed as Appendix A.

A charge of the same identical character for like services in making such authenticating certificates was also adjudicated and allowed by the United States district court, eastern district of New York, in Allen *vs.* U. S., decided July 30, 1892, as shown in Appendix B hereto annexed, Finding III, item 2.

See also—

U. S. *vs.* McDermott, 140 U. S., 151, item 1 (*a*).
U. S. *vs.* Barber, 140 U. S., 164, item 1 (*a*).

Item 20. The facts as found by the court are on Record page 9.

As the facts here are similar to those in items 1 and 2 and the principle of law the same, it is deemed unnecessary to repeat the argument there made. The fee is specially au-

thorized by the third clause of section 828 and the seventh clause of section 847, Revised Statutes.

U. S. *vs.* Barber, 140 U. S., 164, items 1 (*b*), 2.

Item 23. The following facts were found by the court (R., pp. 9 and 10):

"For drawing depositions for complaints in various cases of illegal registration, 4 folios in each case, at 20 cents per folio; oath to affiant, 10 cents; drawing jurat to same, at 15 cents, and filing complaints, 10 cents each, $742.20.

"Services charged were in civil-rights proceedings. No warrant issued as the result of scrutiny of lists of voters by commissioner and inquiries at residences."

The same objection is made to this item as to items 1, 2, and 20 and the same authorities and argument apply.

The services performed and the fees herein claimed were similar in character and form to those included in the suit of the same claimant in the Court of Claims, where judgment was rendered sustaining the legality of the services and fees on June 27, 1892, and no appeal was taken by the Attorney General, as shown by certified copy of findings of fact and conclusion of law (Allen *vs.* U. S., 16,333), Finding II, item 3, hereto annexed as Appendix A.

COUNTER-CLAIM.

The facts found by the court below are in the record (p. 10) and statement of case herein.

This counter-claim is contested on several grounds, either one of which is sufficient in fact and law to establish its illegality:

First. The services and fees were clearly authorized by sections 1982, 828, and 847, Revised Statutes, as fully shown by the authorities and argument on items 1 and 2. If this court decides that the fees claimed in items 1 and 2

are legal and should be paid, it necessarily follows that the fees covered by this counter-claim are also legal and the original allowance correct. The record shows that this counter-claim is based solely on a point of law that, as there was *no arrest and examination*, no specific fees were authorized for the specific services performed.

Second. The record (pp. 7, 10) shows that the accounts covered by this counter-claim, as well as all the other accounts embraced in this suit, were duly presented to the United States court for approval, as required by the act of February 22, 1875 (18 Stats., 333), and orders approving the same as being just and according to law were entered of record. The accounts were then presented to the accounting officers and paid.

The attention of this court is called to the controlling fact that there is not a scintilla of proof in this record that the United States court made any mistake in approving these accounts of claimant, and in the absence of said proof the order of approval is conclusive.

In U. S. *vs.* Jones, 134 U. S., 483, this court held:

"The approval of a commissioner's account by a circuit court of the United States under the act of February 22, 1875 (18 Stats., 333), is *prima facie* evidence of the correctness of the items of that account; and *in the absence of clear and unequivocal proof of mistake on the part of the court, it should be conclusive.*"

This ruling was followed in U. S. *vs.* Barber, 140 U. S., 179, item 2, where this court decided:

"If the officers of the Treasury were at liberty to question the propriety of every charge in all cases, the approval of the court would be an idle ceremony."

This construction of the law was further affirmed and enlarged in U. S. *vs.* Nix, 189 U. S., 206, where this court said:

"We adhere to that view. It would be an insupportable burden upon the officers of court if, every time a question was made before the accounting officers of the Treasury of the correctness of their account, they were required to produce affirmative evidence of every item. This was evidently not contemplated by the statute."

The record (p. 10), however, shows that "in settling the accounts in the counter-claim, the charges were suspended by the accounting officers for *explanations, which were furnished," and the accounts were paid.*

These decisions and the facts found by the court below completely eliminate any intimation or insinuation within or without this record that the services of the claimant were not actually and necessarily performed in accordance with law and in absolute good faith.

Third. The findings are that the accounts of claimant for services from July 1, 1886, to December 31, 1892, covered by this counter-claim, were allowed and paid by the accounting officers by mistake and in pursuance of the then practice of the accounting officers to allow detail fees in proceedings of that character—that is, under sections 1982, 828, and 847, Revised Statutes, and title LXX, chapter 7, Crimes—and that this practice was afterwards discontinued and detailed fees disallowed except in cases of arrest, and statutory fees were allowed in all cases of arrest.

This is error. There was no such allowance by *mistake.* It must be seen that prior to December, 1892, the uniform and continuous practice and construction of the law in question by the accounting officers of the Treasury Department was to allow detail or specific fees for each service performed in *all criminal cases, including prosecutions under chapter 7, Crimes, both before arrest and after arrest and examination,* and subsequent thereto to allow detail fees only after the arrest, but in no case did they allow or pay a fee

of ten dollars under sections 1982 and 1986. This is clearly established by the above finding and also the finding in item 5, which reads as follows:

"For services in 110 criminal cases arising under chapter 7 of title 'Crimes,' the fee prescribed by section 1986, Revised Statutes, $10 for each case	$1,100.00
"Upon which claimant has received detailed fees amounting to	810.40
"Balance claimed	$289.60

"Arrests were made in each of the 110 cases, and the defendants were brought before the commissioner and the cases duly heard and decided."

This item was allowed by the court below.

This shows that the allowance of detail fees in election cases, as in the counter-claim, was not by *mistake*.

The Southworth case (151 U. S., 179) was not decided until January 8, 1894, nearly two years after the present suit was filed in the court below.

The continuous construction of a statute by the executive officers of the Government, whose duty it is to execute it, ought not to be overruled by the courts without cogent reasons.

Edwards *vs.* Darby, 12 Wheat., 206-210.
U. S. *vs.* Philbrick, 120 U. S., 52, 59.
U. S. *vs.* Johnson, 124 U. S., 236, 253.
U. S. *vs.* Ala. G. S. R. Co., 142 U. S., 615, 621.
U. S. *vs.* Finnell, 185 U. S., 244.

"It appears to have been the practice of the Department of Justice for the past twenty years to allow these as proper charges for drawing complaints, and, if there were any doubt as to the propriety of their allowance, such doubt, in view of this long-continued practice, should be resolved against the Government."

U. S. *vs.* McDermott, 140 U. S., 151, item 3.

"This principle has been applied as a wholesome one, for the establishment and enforcement of justice, in many cases in this court, not only between man and man, but between the Government and those who deal with it and put faith in the action of its constituted authorities, judicial, executive and administrative."

U. S. *vs.* Hill, 120 U. S., 169.

It is not a case where the accounting officers were misinformed as to the length of the officer's service, nor where they overlooked a statutory restriction. It can hardly be said that the payments were made even in mistake of law, for the mistake relied upon depends upon a point of law *now raised and not yet decided.*

Patterson *vs.* U. S., 28 Ct. Cls., 321.

The principle involved in the case at bar is the same, as here 'the mistake relied upon depends upon a point of law *now raised for the first time and not decided.*"

Fourth. No accounts embraced in this suit reopen any former accounts settled and paid by the accounting officers.

The court below found the following facts (R., p. 10):

"No disallowed balance in any account to which the counter-claim relates is sued for herein."

This finding effectually disposes of the contention that this suit opened any settled account of the claimant.

But this counter-claim must be rejected because (1) no running account exists between the claimant, a commissioner of the circuit court, and the Government, and (2) its purpose is to recover back money paid on accounts heretofore settled and not reopened in this suit.

There is no running account between the Government and a commissioner. There is no continuing contract between them. Specified fees are paid for distinct services as they may happen to be rendered. The relations between a com-

missioner and the Government are renewed and cease with each separate service. He may continue in office indefinitely and never perform another service or render another account. Each one of his statements of charges is complete in itself. When a commissioner claims a fee it is never necessary to reopen a former account to decide whether payment shall be made. If, perchance, reference to a former account is made, as a guard against double payment, that is *not a reopening*.

There is nothing of a running or continuing nature in a commissioner's services or his accounts therefor.

The counter-claim relates to certain settled accounts, the settlement of which was acquiesced in by the United States and the claimant. Those accounts are not reopened in this suit. To reopen is to resettle, to readjust. An account is not reopened unless something in that account is both reconsidered and readjusted.

The claimant does not sue for any disallowed balances in those accounts.

A case in point is that of Mullett, a commissioner appointed to examine and report on the sale of navy yards, who sued in the Court of Claims for an additional sum due him. The Government counterclaimed certain expenditures before allowed him. In deciding on this counterclaim the court said:

"In the absence of fraud or mistake of fact such a settlement, after payment, cannot be reopened and the money recovered back. The distinction between this case and McElrath's (102 U. S., 426) is that there the claimant was in fact and in law, a stranger to the U. S. and the accounting officers were without authority of law to award him any balance whatever, and his so-called account had been kept open and finally adjusted by his own action; while here the account has been mutually adjusted and settled, the balance paid, and everything between the parties relating to the account for expenditures closed. The action of the claim-

ant does not attack the settlement but is to recover a balance remaining unpaid."

Mullett *vs.* U. S., 21 Ct. of Cl., 485.

No appeal was taken by the Attorney General.

In the case of Hillborn, to whom payments had been made under a mistaken view of the law, the Court of Claims said:

"In our opinion, when money is paid, after careful consideration of the law and facts by such high officials and upon settlement made by the accounting officers, it cannot be held that the district attorney received the money under such circumstances that in equity and good conscience he ought not to retain it, although it may appear that all those public officers were mistaken in their interpretation of the statutes and that he was not in law entitled to the compensation.

"Claimant is not seeking to reopen settlements. In his amended petition filed by leave of the court, he omits the claims embraced in those accounts and thus acquiesces therein. We hold that the settlements are equally binding upon the defendants and that money paid thereon cannot be recovered back on the plea of counter-claim."

Hillborn *vs.* U. S., 27 Ct. of Cl., 547.

No appeal was taken by the Attorney General.

As in Hillborn's case, the appellant does not seek to reopen his settlements. He has acquiesced in them. His suit is for recovery of *new items* standing unpaid.

Fifth. The amounts counterclaimed cannot, in any event, be deducted from the sum due the claimant upon his petition herein.

I.

A COUNTER-CLAIM BY THE GOVERNMENT MAY BE SUSTAINED, IN A PROPER CASE, ONLY (1) WHERE THERE EXISTS WHAT AMOUNTS TO A RUNNING ACCOUNT BETWEEN THE PARTIES; (2) WHERE THE CLAIMANT REOPENS A SETTLED ACCOUNT BY SUING FOR A BALANCE DISALLOWED UPON SUCH SETTLEMENT; (3) WHERE NO PECULIAR CIRCUMSTANCES APPEAR TO MAKE RECOVERY INEQUITABLE, UNJUST, OR UNLAWFUL; (4) WHERE THE QUESTIONS INVOLVED IN THE COUNTER-CLAIM HAVE NOT BEEN ALREADY JUDICIALLY DETERMINED.

Running accounts exist where employment and pay is of a continuing nature, as in the case of army officers, or where pecuniary relations to the Government are continuing, as in the case of paymasters, or where there are continuing contracts for special services, as for carrying mails.

A person who renders at indefinite times distinct services independent of any continued employment or contract, which services are paid for by separate fees, has no such running account or continuing contractual relation to the Government.

The rule is settled that an account heard and determined by accounting officers cannot be reopened for correction of error. The same is true of executive officers in general.

U. S. *vs.* Bank of the Metropolis, 15 Pet., 377.
Stotesbury *vs.* U. S., 146 U. S., 196.
Waddell *vs.* U. S., 25 Ct. Cl., 323.
Armstrong *vs.* U. S., 29 Ct. Cl., 148.
Cotton *vs.* U. S., 29 Ct. Cl., 207.
Opin. Black, 9 Opin. Att'y Gen'l, 34.
Opin. Bates, 10 Opin. Att'y Gen'l, 255.
Opin. Browning, 12 Opin. Att'y Gen'l, 386.
Opin. Bristow, 13 Opin. Att'y Gen'l, 456.

The rule, in general, is that payments made under mistake of law cannot be recovered.

Elliott *vs.* Swartout, 10 Pet., 137.
Lamborn *vs.* County Com'rs, 97 U. S., 181.
Midland Gt. Western R. *vs.* Johnson, 6 H. of L. Cas., 798.
Clarke *vs.* Dutcher, 9 Cow., 674.
Bank of U. S. *vs.* Daniel, 12 Pet., 32.
Pollock on Contracts (6th ed.), 439.

Equitable relief in general will not be granted for error after examination and judgment.

Hillborn *vs.* U. S., 27 Ct. Cl., 547.
Queen *vs.* Lord Com'rs of the Treas., 16 Q. B., 357.
Hunt *vs.* Rousmanier's Adm'rs, 1 Pet., 1.

Governments are not exempt from the application of the principles referred to.

Co. of Wayne *vs.* Randall, 43 Mich., 137.
Supervisors *vs.* Briggs, 2 Denio, 26.
Livermore *vs.* Peru, 55 Me., 469.

In transactions of a commercial character the Government must bear the consequences of its officers' neglect.

Cooke *vs.* U. S., 91 U. S., 389, 398.

And so in contract cases.

U. S. *vs.* Bostwick, 94 U. S., 53, 66.
U. S. *vs.* State Bank, 96 U. S., 30, 36.
U. S. *vs.* Smoot, 15 Wall., 36.

Where an officer, the validity of whose appointment was questionable, had rendered service, payment for which was made but subsequently counterclaimed as unlawfully granted, the court said:

"As the claimant, if not an officer *de jure,* acted as an officer *de facto,* we are not inclined to hold that he has received money which, *ex æquo et bono,* he ought to return."

Badeau *vs.* U. S., 130 U. S., 439.

In other words, as the services had been rendered the payment, although unlawful, must stand.

A class of cases is to be distinguished which appear to sustain the granting of relief to the Government against the acts of its officers, as, for example, where land patents are issued under mistake. Such cases are:

Mullan *vs.* U. S., 118 U. S., 271.

Shipley *vs.* Cowan, 91 U. S., 330.

Wis. C. R. Co. *vs.* Forsythe, 159 U. S., 47.

The principle in the latter class of cases differs from that involved in cases where money is reclaimed.

As said in Stone *vs.* U. S., 69 U. S., 525:

"The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority."

Such patent could convey no right. Setting it aside deprives the holder of no property.

Other exceptional cases are those involving official action in excess of authority, non-compliance with express provisions of law, fraud, and the like.

For example, the Government will not be bound where an agreement was made with a Treasury agent having no power to contract.

Whiteside *vs.* U. S., 93 U. S., 247.

Or where an oral agreement was made which the law required to be in writing.

Hawkins *vs.* U. S., 96 U. S., 689.

Or where Government property was transferred irregularly and by private arrangement when the statute required public sale.

Steele *vs.* U. S., 113 U. S., 128.

In Steele's case a contractor for work on a vessel received old material at a price far below its value under an arrangement with an officer having no authority to make the agreement, and where the statute (Revised Statutes, 1541) required a public, not a private, sale. The court says:

"The delivery was without any authority of the Navy Department. * * * The whole transaction was illegal, and appellant is chargeable with knowledge of the fact. It was, in effect, a private sale of the property of the United States without survey, inspection or appraisement, at a grossly inadequate price."

A general principle was stated by the Supreme Court in a case where the Government sought to recover a claim paid to assignees of the claimant under a void assignment, the court saying:

"Under the circumstances, it is quite clear that if the controversy were between private parties there could be no recovery (1 Story Cont., sec. 541).

"With a few exceptions growing out of considerations of public policy, the rules of law which apply to the Government and individuals are the same."

U. S. *vs.* McKnight, 98 U. S., 179.

Respecting payments made by the Government under mistake of law, the authorities do not hold that they may be counterclaimed in the absence of existing circumstances excepting the case from the general rule.

In the case of Duval, receiver, in the Court of Claims, overpayments for carrying mails were made to a railroad, by mistake of fact, by the Post Office Department, not upon error of law. The terms of a land grant to the road, of

which it was aware, required it to carry mails for a reduced amount. Payments had been made on the contract from time to time, but there had been no settlement. The court held that, for the purpose of rectifying mistakes, statements showing items and balances for carrying mails on a contract may be regarded as running accounts, and payments made on such accounts in violation of law may generally be recovered back by counter-claim "where no peculiar circumstances appear to make such recovery inequitable or unjust." But in business matters the Government is bound by the acts of its officers in transactions within the line of their duty "under the principles of the law of agency as applied to individuals," and the court says:

"We constantly hold the Government concluded or estopped by such acts of its officers as form part of the *res gestæ*."

Duval, receiver, *vs.* U. S., 25 Ct. of Cl., 46.

In McElrath's case, in the Supreme Court, a naval officer resigned and applied for settlement of accounts. The accounting officers settled the same, and certified as due a sum equal to half pay and allowances. The claimant accepted it under protest, claiming full pay, and stating that he would not hold himself concluded as to the balance so claimed. He then sued for such balance, and the Government counterclaimed for the sum already paid him as not allowed by law. He had been in continuous service under regular pay, and his account was a running account and was so treated by the court.

The court held the first allowance illegal, saying that if the general rule in such cases would preclude the Government from reclaiming money paid under mistake of law simply that rule is inapplicable in this case, and—

"Had the claimant rested upon the settlement of his account by the proper officers of the Government, his right to invoke the general rule, to which we have referred, would

have been entitled to more consideration than it can now receive. Upon receiving the amount rewarded to him by the representatives of the Government, he distinctly announced his purpose not to abide by their settlement of his account; but, in disregard thereof, to demand an additional sum upon the basis of full pay and allowance from June 20, 1866, to July 10, 1873.

"This suit itself invites the court to go behind that settlement, to re-examine all the questions arising out of the claim of appellant for full pay and allowances, and to correct the error which he insists was committed to his prejudice by the accounting officers of the Government."

McElrath *vs.* U. S., 102 U. S., 426.

In Burchard's case a retired navy chaplain received three-quarters sea pay for four years, when the amount was reduced to one-half sea pay. He sued for the difference, and counter-claim was made for previous overpayment. This was held to be a running account, and the court said:

"In reality the account had never been closed and was always open to adjustment. Overpayments made at one time by mistake could be corrected and properly charged against credits coming in afterwards. His pay was fixed by law, and the disbursing officers of the Department had no authority to allow him any more. If they did it was in violation of the law, and he has no right to keep what he thus obtained. Whether the Government can in any case be precluded from reclaiming money which has been paid by its disbursing and accounting officers under a mistake of law is a question which it is not now necessary to decide any more than it was in McElrath *vs.* United States, 102 U. S., 426, 441, when it was suggested. This is a case where the disbursing officers, supposing that a retired officer of the navy was entitled to more than it turns out the law allowed, have overpaid him. Certainly under such circumstances the mistake may be corrected."

U. S. *vs.* Burchard, 125 U. S., 176.

Stahl's case involved the question of longevity pay for continuous service, to be fixed according to the lowest grade held " since last entering the service." He resigned when

assistant engineer, and the same day was commissioned in the higher grade of assistant constructor. The Department credited him with longevity pay according to the latter grade. He claimed such pay according to the former grade also. The court held his claim good, but, as his resignation was merely incident to promotion, his was "a continuous service," and, as in McElrath's case, the overpayment improperly made could be charged against his account. This account, like McElrath's and Burchard's, was a running account for continuous service under regular pay.

U. S. *vs.* Stahl, 151 U. S., 366.

The recent case of Wisconsin Cent. R. Co. *vs.* U. S., 164 U. S., 190, will be found in harmony with former decisions.

This was a case of continuing contract for carrying mails in which the Government counterclaimed overpayments by the Post Office Department of amounts not due because of land grants which required their deduction from compensation earned. Of this the company had knowledge.

The court holds that the Postmaster General, in directing payment under statutes fixing rates, does not act judicially, and that the rates due were not doubtful. The court says:

"We do not consider the true construction as doubtful, and that the departmental construction referred to was neither contemporaneous nor continuous."

The court cites the cases of Duval, McElrath, Steele, Burchard, Stahl, Whiteside, and Hawkins as declaring that in cases of that character executive decisions are not conclusive. It is important to note, however, that a special provision of the postal laws (section 4057, Revised Statutes) is cited as applicable and authorizing review of decisions in the Post Office Department and recovery of money paid by mistake, fraud, etc.

The court quotes from Duval's case (25 Ct. Cls., 46) that statements of

"balances due for carrying the mails ordinarily, and in the absence of special circumstances, may be regarded as running accounts, at least while the parties continue the same dealings between themselves; and that money paid in violation of law upon balances certified by the accounting officers generally may be recovered back by counter-claim or otherwise where no peculiar circumstances appear to make such recovery inequitable or unjust,"

and says that "the governing principle in the case before us is the same."

And the court finds that the case presented is one in which money illegally paid may be recovered back. It is careful to say that "there is nothing on this record" to render inapplicable the principle declared in the cases cited.

The decision in the Wisconsin Railroad case, summarized, is: There was a continuing contract for carrying mails; land grants to the road called for deduction of certain amounts from its compensation; having knowledge of this, it received these amounts; the Postmaster General in directing payment of these amounts acted ministerially, not judicially; what should have been paid was not doubtful; the cases of Duval, McElrath, etc., cited, settled the law for this case; a special statute authorized the recovery of amounts paid by mistake, fraud, etc., in postal cases; this was a running account; no peculiar circumstances appear to make recovery inequitable or unjunst, and "there is nothing on the record" to take the case out of the class in which money unlawfully paid may be recovered back.

The Wisconsin Railroad decision does not conflict with previous rulings; it merely applies them to that case. It declares no new law. It does not enlarge the scope of the principle announced in preceding cases, nor does it announce any new rule which would admit the present counter-claim to consideration; and, assuming that this counter-claim may

be considered, the principle is still upheld that it cannot be allowed if circumstances appear to make recovery inequitable and unjust.

The case of Yoes *vs.* U. S. (30 Ct. Cls., 370, and 31 Ct. Cls., 293) is distinguishable from the case at bar. That was a marshal's account, which is necessarily running and always open for adjustment. He must make return every half year of all his fees and expenses (Revised Statutes, 833), and can only retain an amount equal to his maximum compensation. The fees he earns are not his; he holds them in trust. The surplus he pays over, from fees deposited, is not made up of any particular fees, and so his maximum comes not from specified fees, but from the general fund. His is a continuing office for limited pay.

A commissioner's position is the reverse. His fees as received are his own. He makes no return and is not limited to a maximum. When he renders a service and is paid, his relations to the Government cease; his account is closed.

A marshal's account, on the contrary, is not the quarterly or half-yearly statement of charges which he makes, but the aggregation of them all, because by such aggregation only can the amount he may retain be determined.

In the Yoes case the counter-claim against Burchard (125 U. S., 176) is referred to as sustained not because his account was always open, but because he was overpaid.

We do not think the opinion, carefully examined, sustains this view. The court refers particularly to the open condition of the account. It will be noticed that in its conclusion the court sums up the important facts, namely, that the claim was for "a balance claimed to be due on pay account;" that "in reality the account had never been closed, and was always open to adjustment. Overpayments made at one time by mistake could be corrected and properly charged against credits coming in afterwards;" that "his pay was fixed by law," he being an "officer of the navy," and he

was "overpaid," and that "under such circumstances the mistake may be corrected."

The important "circumstances" were that Burchard's was a running "pay account," of an "officer of the navy" in continuing service, whose "pay was fixed by law," and "the account had never been closed and was always open." Overpayment was merely incidental.

That the account was necessarily open is made a controlling characteristic of that case.

While, in the Yoes case, the account was necessarily reopened, it will be seen that there is no such reopening in the case at bar.

The character of the cases cited in which counter-claims have been allowed should be noticed, to wit: Wisconsin Railroad and Duval, overpayments on running accounts under continuing contracts for carrying mails; McElrath, Burchard, and Stahl, overpayments on running accounts of naval officers, whose services were of a continuing nature; Whiteside, agreement made by officer having no authority to contract; Hawkins, oral agreement when written contract was required; Steele, irregular delivery and private transfer of property when public sale was required; Yoes, overpayment to an officer who served continuously for a fixed maximum compensation and whose account was always open to adjustment.

It will be observed that in no case cited sustaining a recovery back of money paid was the departmental construction under which the unlawful payment was made contemporaneous or continued.

The great lapse of time since payment of the sums sought to be recovered back should alone forbid consideration of the counter-claim. It has been declared to be "exceedingly dangerous doctrine" that where the United States had acted on a settlement and paid the sum found due such settlement can be opened or set aside years afterwards—

"when the remedy of the party against the United States is barred by the statute of limitations, and the remedies of the United States are intact, owing to its not being subject to any act of limitation."

U. S. *vs.* Johnston, 124 U. S., 236, 255.

Furthermore, an important feature of the case at bar distinguishes it from every case cited in which the Supreme Court has sustained a counter-claim.

In each one of those cases the basis of the original payment was merely a department ruling, without the characteristics or force of judicial action. In the present instance, however, the amounts counterclaimed were paid after a judicial determination, made under the act of February 22, 1875, upon a hearing by the court, and subsequently affirmed by the revisory power of the accounting officers.

None of the counter-claims referred to sustained by the Supreme Court involved any question which had been presented for the determination of a court or which had received judicial consideration.

This distinctive feature of the case at bar alone renders inapplicable to it any principle bearing upon the question of counter-claim established in the cases referred to.

ERRORS OF FACT IN THE OPINION OF THE COURT BELOW.

It is alleged below (p. 7) that the United States court to which claimant's accounts were submitted "declined to make the usual order of approval." This is not the fact. The substantial part of the order appears on Record page 7. This was the usual and uniform order of approval of the United States circuit court, eastern district of New York, not only of claimant's accounts, but of those of the marshal, clerk, district attorney, and other commissioners during a long period of years, including the years in question. This is shown by certified copies of such orders approving similar accounts during many years before, including and after the

period of the account in question hereto annexed as Appendix "C."

It is assumed that this court will take judicial notice of these orders of court.

The circuit court did not decline to make the usual order. It made the same order it uniformly made.

This form of order is in strict compliance with the act of February 22, 1875 (18 Statutes, 333). The same form of order was held sufficient in Allen *vs.* U. S., Ct. Cls., 16,333.

It fully expresses the court's approval of all of which it can be judicially cognizant. The court cannot properly express more than this in its judicial capacity.

The court below does not declare this form of order insufficient, and its criticism of it is, as shown, without foundation in fact.

This approval, therefore, was an adjudication of the correctness of the items of the charges to which it related.

U. S. *vs.* Jones, 134 U. S., 483.

Apparently to fortify the offsetting of the counter-claim, it is stated in the opinion below (R., pp. 15, 16) that the counter-claim included payments, "few in number," of per diems charged for determining whether to issue the warrant. This assertion is contrary to the fact and without a particle of evidence in the findings of fact to support it. The Government introduced no evidence whatever respecting the accounts counterclaimed, and not a word in the findings substantiates the allegation in question. It is a bare assertion, having no other support than the statement accompanying it that the account for 1886, in the counterclaim, "discloses items paid of $7.05," which, the opinion says (R., p. 16), was "evidently" $2.05 for the jurat, filing the complaint, entering and docketing the same, and issuing the warrant, and the other part, $5, "for determining whether to take the complaint or not." The opinion cites

no evidence, but says "evidently" the charge was so made up.

On the contrary, the record shows that the charge was evidently "not so made up." The finding is (p. 10) that payment of this charge was suspended for explanation, which was furnished and the charge then paid. It is evident that if this scrutiny and proof had not shown that the $7.05 covered a per diem for hearing after arrest it would not have been paid. This, therefore, refutes any suggestion that it included an improperly charged per diem. The proof was that the $7.05 in question was charged only where there had been an arrest and hearing, and that only $2.05 was charged in some such cases and $7.05 in others was because when two or more defendants were arrested and before the commissioner on the *same day* a per diem could be charged in one case only, making $7.05 in that case and $2.05 in the others. There was no ground whatever for the wrongful allegation in the opinion that the $7.05 included a per diem except for a hearing after arrest.

In the opinion of the court below (R., p. 18) the following statement is made:

"Without impugning the good faith of the plaintiff on the record as presented, we think the warrants issued but withheld, whether any such are embraced in the counterclaim or covered in the present demand, were unnecessary. If the services in getting up these warrants were performed for the convenience of the officer, or were manifestly unnecessary or *useless*—even if they be such as he judges proper for himself—they cannot be made the basis of a claim against the Government."

This is misleading and contrary to the fact. This claimant during his entire term of office as commissioner—over twenty-five years—has never charged in any account rendered a fee for issuing a warrant of arrest unless the same was placed in the hands of the marshal for service and due return made thereon by him, which was entered of record on

the claimant's docket. No fee is charged or claimed in this record for issuing any warrant of arrest withheld or not placed in the hands of the marshal for execution.

This is sustained by the findings of fact, and no proof whatever was offered by the defendant in the court below to contradict this fact or to prove that the services of claimant were useless.

Referring to the opinion of the court below (R., p. 19), the following statement is made:

"The plaintiff now concedes the incorrectness of the methods of the accounting officers and seeks by one of his items (5) to have reviewed all of the cases in which his detail fees amounted to less than $10, and to apply section 1986 now. He is entitled to enough to make up these fees to $10 in each 'case,' and this part of the demand proves the incorrectness of the charge in those items for specific fees where warrants were not served."

This is misleading and is not the fact, for the claimant does not seek to review or reopen any former settled account or to claim any balance due on said account, as proven by the following finding of facts (R., p. 9):

"The fees in items 1 to 17 are not balances unpaid upon accounts presented and settled by the accounting officers; they are fees not previously charged in any former account."

Also on Record page 10:

"No disallowed balance in any account to which the counter-claim relates is sued for herein."

The claimant only seeks to recover in this *new* account (item 5) the fees which he claims are authorized by law, but which would not have been paid when the original or old accounts were settled and paid under the then practice of the accounting officers.

This is sustained by the opinion of the court (R., p. 11) in the following words:

"Between the dates mentioned (January 29, 1886, to January 20, 1892), as commissioner, he presented accounts for services rendered the Government, which were duly audited and paid. *The charges in those accounts, however, did not include the items covered in the present suit, and it is conceded that the accounts presented and paid contain the only charges which would have been allowed and paid at the time of their presentation.*"

Upon the whole case, it is submitted that this appeal should be sustained on all points at issue.

CHARLES CALVERT LANCASTER,
Counsel for Appellant.

HERBERT E. SMITH,
Of Counsel.

APPENDIX "A."

COPY.

IN THE COURT OF CLAIMS.

No. 16333.

JOHN J. ALLEN
vs.
THE UNITED STATES.

Findings of Fact.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

On September 22d, 1874, claimant was appointed a commissioner of the circuit court of the United States for the eastern district of New York, and has continued to hold said office up to the present time.

II.

As such commissioner as aforesaid he has performed services in cases in which the United States was party or interested, and for which service the United States is liable for the payment of the lawful fees, as follows:

1.	For hearing and deciding on criminal charges, 87 days at $5 per diem....	$435.00
2.	" administering 173 oaths to depositions of special deputy marshals at 10¢...	17.30
3.	" *drawing complaints in 976 cases, 4 folios each, at 15¢ per folio, 60¢; oath thereto, 10¢; filing same, 10¢; total 80¢ each*.....	780.80

4.	For drawing depositions of special deputy marshals and supervisors, 1,058 depositions, 2 folios each, 2,116 folios, at 15¢ per folio	317.40
5.	" *certifying complaints, with the records pertaining thereto, for transmittal to the chief supervisor of elections, 2,696 folios, at 15¢ per folio*	404.40
6.	" 748 oaths of office of supervisors and special deputy marshals at 2 folios each, 1,496 folios, at 15¢ per folio	224.40
7.	" issuing and entering seven commitments at $1.15 each	8.05
8.	" taking and entering in 3 cases recognizances of defendant to appear from day to day during pendency of hearing at $1.10 each	3.30
		$2,190.65

III.

After the performance of such service as aforesaid he duly presented his accounts therefor to the circuit court of the United States for the eastern district of New York, and the same were duly approved. The part of said accounts for the period from September 30, 1882, to June 30, 1886, were presented to the proper accounting officers of the United States Treasury, and their payment was refused; the same aggregated the sum of $2,190.65.

IV.

Afterwards, as commissioner as aforesaid, other and similar services for and on behalf of the United States were performed by him, for which the United States became and was liable for the payment of his lawful fees, as follows:

1.	35 commitments at $1	$35.00
2.	Entering the same (35) at 15 cents	5.25
3.	Certifying copy process returned, etc., to court (240 folios) at 10 cents a folio	24.00
4.	48 certificates at 15 cents	7.20
5.	149 hearings at $5	745.00

6. Complaint at 15 cents folio (299 folios; 31, 4 folios; 57, 3 folios, and 2, 2 folios)	$44.85
7. 90 oaths at 10 cents	9.00
8. 90 filings at 10 cents	9.00
9. 90 warrants at $1	90.00
10. Entering return (90) at 15 cents	13.50
11. 90 filings at 10 cents	9.00
12. Order to pay witnesses (2 fols. each, 100 fols.) at 15 cents per folio	15.00
13. Filing 50 orders to pay witnesses at 10¢ each	5.00
14. Copy for marshal (100 folios) at 10 cents folio	10.00
15. 50 certificates at 15 cents	7.50
16. Taking and entering in 23 cases recognizances of defendant to appear from day to day during pendency of hearing at $1.55 each	35.65
17. 5 subpœnas at 25 cents	1.25
18. Taking recognizances in 2 cases of defendant to appear and answer indictment in U. S. court at $1.55 each	3.10
	$1,069.30

1. 24 complaints, 3 fols. each, 72 fols., at 15¢ fol.	$10.80
2. 1 complaint, 4 fols. at 15 cents	.60
3. 25 oaths at 10 cents	2.50
4. 25 filing 25 complaints at 10 cents each	2.50
5. 25 warrants at $1 each	25.00
6. Entering return of above at 15 cents each	3.75
7. Filing at 10 cents each	2.50
8. 20 commitments at $1 each	20.00
9. Entering same at 15 cents each	3.00
10. 10 subpœnas at 25 cents each	2.50
11. 25 orders to pay witnesses, 2 fols. each, 50 fols., at 15 cents	7.50
12. 25 copies for marshal, 2 fols. each, 50 fols., at 10 cents fol.	5.00
13. 25 filing above orders at 10 cents each	2.50
14. 25 certificates at 15 cents each	3.75

15. 18 certified copies process, return, etc., for the court, 5 fols. each, 90 fols., at 10 cents fol.	$9.00
16. 18 certificates at 15 cents each	2.70
17. 3 recognizances at $1.55 each (pending hearings)	4.65
18. 59 hearings at $5 each	295.00
	$403.25

V.

After the performance of such services as aforesaid he duly presented his accounts therefor to the said circuit court of the United States for said eastern district of New York, and the same were duly approved, but, being advised that the accounting officers would not pay the same, they were not presented to them for payment. The said last-named accounts covering the periods ending December 30, 1887, and June 30, 1887, aggregated the sum of $1,469.70.

Conclusion of Law.

The court determines as a conclusion of law that the claimant recover the sum of ($3,663.20) three thousand six hundred and sixty-three dollars and twenty cents.

By the COURT.

Filed June 27, 1892.
A true copy.
Test.
This 26th day of October, 1906.
[SEAL.]

JOHN RANDOLPH,
Ass't Clk Ct. of Claims.

APPENDIX "B."

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Common Law B. 369.

JOHN J. ALLEN
vs.
THE UNITED STATES.

To the Honorable CHARLES L. BENEDICT,
Judge of the District Court of the United States in and for the Eastern District of New York:

The petition of John J. Allen, the plaintiff above named, respectfully represents:

I.

That he is a citizen of the United States and a resident of the city of Brooklyn, in the State of New York.

II.

That heretofore, to wit, September 22nd, 1874, he was appointed a commissioner of the circuit court of the United States for the eastern district of New York and has continued to hold said office to the present time.

III.

That as such commissioner as aforesaid he has performed certain services in behalf of the United States and in certain matters and proceedings in and to which the United States was a party or interested, and that the United States is liable for the payment of the lawful fees for such services.

IV.

That after the performance of the services aforesaid he duly presented his accounts therefor to the circuit court

of the United States for the eastern district of New York, and the same were by the said court duly approved, but, being advised that the accounting officers would not certify the same for payment, the said accounts were not presented to said officers.

V.

That the said accounts for the services aforesaid aggregate the sum of eight hundred and twenty-six and 35/100 dollars, and that the particulars thereof are set forth in the Schedules A, B, and C hereto appended and made a part of this petition.

VI.

That no assignment of transfer of said fees or claims or of any part thereof has been made, and no part of the same has been paid or allowed in any manner to your petitioner or to any one for him.

Wherefore your petitioner prays judgment against the United States, upon the facts and law, for eight hundred and twenty-six and 35/100 dollars and costs.

JOHN J. ALLEN.

JOHN J. ALLEN,
Plaintiff, in Person,
201 *Montague St., Brooklyn, N. Y.*

EASTERN DISTRICT OF NEW YORK, *ss:*

John J. Allen, being duly sworn, says that he is the plaintiff mentioned in the foregoing petition: that he has read the same and knows the contents thereof, and the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN J. ALLEN.

Sworn to before me this 14th day of July, 1890.

B. LINCOLN BENEDICT,
U. S. Commissioner, Eastern Dist. N. Y.

SCHEDULE A.

For hearing and deciding in criminal cases upon the following days, the same not being included in any other account, viz:

1884.			
July 23.	U. S.	*vs.* H. D. Markstone ...	Hearing and deciding motion for continuance.
" 25.	"	*vs.* D. E Carpenter	Do. Do.
Sept. 19.	"	*vs.* D. E. Carpenter	Do. Do.
1886.			
Jan'y 13.	"	*vs.* F. Schink....	Do. on sufficiency of bail.
1887.			
Oct. 12.	"	*vs.* H. Joy.....	Do. as to amount of bail and motion for continuance.
	"	*vs.* R. Ribbons.....	Do. on sufficiency of bail.
1889.			
May 17.	"	*vs.* R. Balsano.....	Do. motion for continuance.

Total, 7 days, at $5.00 per day..... $35.00

SCHEDULE B.

June, 1885. For making certificates authenticating complaints and records pertaining thereto under the laws relating to the elective franchise, transmitted to the chief supervisor of elections pursuant to sec. 2027, U. S. Rev. Stat., 1,587, at 15¢.... $238.05

SCHEDULE C.

Nov., 1884, to Feb., 1885. For drawing affidavits for verification of accounts and vouchers for payment of supervisors of election and special deputy marshals for services rendered by them respectively in connection with the election for Representatives in Congress, held in November, 1884, in the eastern district of New York, 1,006 (1 fol. each), at 15¢..... $150.00

For administering oaths to the above officers respectively on the verification of accounts and vouchers last mentioned, 1,006, at 10¢.....	100.60
For certifying the administration of the above oaths on the originals and duplicates of the above accounts and vouchers, required by law, 2,012 certificates at 15¢.....	301.80
	$553.30

THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Common Law B. 369.

JOHN J. ALLEN
vs.
THE UNITED STATES.

At a stated term of the U. S. district court held in the city of Brooklyn on the 26th day of July, 1892, Hon. Charles L. Benedict holding the court.

Present: Jesse Johnson, Esq., U. S. district attorney.
John J. Allen, Esq., plaintiff, in person.

The plaintiff moves to amend the petition herein, to conform to the proofs, by striking out the last three lines of the petition, commencing with the words "Wherefore your petitioner prays," and inserting in lieu thereof the following:

"That the services aforesaid actually rendered and the full amount of the fees therefor were as follows: (1) Hearing and deciding in criminal cases, 7 days, $35; (2) making certificates authenticating complaints and records pertaining thereto, forwarded under sec. 2027, R. S., 1,587 fols., $238.05; (3) drawing affidavits of supervisors and marshals as to their services, 2,012 fols., $301.80; administering oaths on such affidavits, $100.60; certifying administration of oaths on same, 2,012 fols., $301.80; total, $977.25. Wherefore your petitioner prays judgment against the United States upon the facts and law for nine hundred and seventy-seven dollars and twenty-five cents and costs."

Motion granted and ordered that petition be amended as stated.

U. S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Common Law B. 369.

JOHN J. ALLEN
vs.
THE UNITED STATES.

And now comes Jesse Johnson, as attorney of the United States of America for the eastern district of New York, to defend the interests of the said United States in the above-entitled suit, and the said attorney, on behalf of the said United States, answering the petition herein, alleges:

1. That he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in said petition, and therefore denies the same.

Wherefore the said attorney, on behalf of the said United States, prays that the said petition be dismissed, and that he have his costs against the said plaintiff.

JESSE JOHNSON,
United States Attorney for the
Eastern District of New York.

EASTERN DISTRICT OF NEW YORK, *County of Kings, ss:*

Jesse Johnson, being duly sworn, says that he is the United States attorney for the eastern district of New York; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

JESSE JOHNSON.

Sworn to before me this 13th day of November, 1891.
B. LINCOLN BENEDICT,
U. S. Commissioner.

U. S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Common Law B. 369.

JOHN J. ALLEN
vs.
THE UNITED STATES.

This case having been heard upon the pleadings and proofs, the court finds as follows:

FINDINGS OF FACT.

I.

The plaintiff, John J. Allen, was a commissioner of the circuit court of the United States for the eastern district of New York, duly qualified and acting as such commissioner, from July 1, 1884, to June, 1889.

II.

During said period he performed certain services as such commissioner and thereafter presented accounts therefor. No payment has been made for said services.

III.

The services so rendered and the fees therefor were as follows:

1. Hearing and deciding in criminal cases July 23 and 25 and Sept. 19, 1884; January 13, 1886; Oct. 12, 1887; June 28, 1888, and May 17, 1889, seven days, at $5.00 per day.....	$35.00
2. *Making certificates authenticating complaints and records pertaining thereto, transmitted to the chief supervisor of elections pursuant to sec. 2027, U. S. Rev. Stat., 1,587 folios, at 15 cents per folio*.....	238.05
3. (*a.*) Drawing affidavits of supervisors of election and special deputy marshals as to the actual performance of the services rendered in connection with the congressional election of 1884, for which compensation was claimed by them in their accounts for payment, 2,012 folios, at 15 cents per folio.....	301.80
(*b.*) Administering oaths to the foregoing at 10 cents each	100.60
(*c.*) Certifying the administration of the above oaths on the accounts aforesaid, 2,012 folios, at 15 cents per folio.....	301.80

CONCLUSIONS OF LAW.

Under the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to a judgment for the sum of nine hundred and seventy-seven dollars and twenty-five cents.

CHAS. L. BENEDICT, *Judge.*

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Common Law B. 369.

JOHN J. ALLEN
vs.
THE UNITED STATES OF AMERICA.

This action having been brought by the plaintiff above named to recover of the United States of America fees for services rendered as a commissioner of the circuit court of the United States for the eastern district of New York, and the United States, by its attorney, Jesse Johnson, having appeared and joined issue by answer, and the issues in said action having come on to be tried before the Honorable Charles L. Benedict, district judge, on the 26th day of July, 1892, and the court having made and filed a finding on the facts in favor of the plaintiff for $977.25:

Now, on motion of John J. Allen, plaintiff, in person, it is adjudged that the plaintiff, John J. Allen, do recover of the United States of America the sum of $977.25, being the amount of fees due him for services as aforesaid.

Dated July 30th, 1892.

B. LINCOLN BENEDICT, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby certify that the transcript annexed to this certificate is a true copy of the originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the borough of Brooklyn, in the eastern district of New York, this 9th day of November, in the year of our Lord one thousand nine hundred and six.

[SEAL.] RICHARD P. MORLE, *Clerk.*

[Endorsed:] U. S. district court, eastern district of New York. John J. Allen *vs.* The United States of America. Record. Appendix "B."

APPENDIX "C."

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the orders annexed to this certificate are true copies of the respective originals on file and remaining of record in my office and recorded in the "minutes" of this court.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 11th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal of the Circuit Court, Eastern Dist. of N. Y.]

B. LINCOLN BENEDICT, *Clerk.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Monday, the first day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of S. R. HARLOW, U. S. Marshal for the Eastern District of New York.

An account of his fees and disbursements for six months ending June 30th, 1878, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, by S. R. Harlow, U. S. marshal, E. D. N. Y., duly verified by oath and in presence of A. W. Tenney, United States district attorney for said district, and it appearing to the satisfaction of this court by said oath that the services and disbursements therein charged for have been necessarily and actually performed, and no item of said account having been objected to by said A. W. Tenney, U. S. district attorney, who appears for the United States in the

matter of approval of said account, and there being, therefore, no question in regard to the said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 7th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Charles L. Benedict, District Judge, holding the court.

In the Matter of the Approval of the Account of B. LINCOLN BENEDICT, U. S. Commissioner for the Eastern District of New York.

An account of fees and services of B. Lincoln Benedict, U. S. commissioner, for six months from January 1, 1879, to June 30, 1879, inclusive, amounting to six hundred and fifty-nine 95/100 dollars, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, by A. W. Tenney, United States district attorney for said district, duly verified by oath of said United States commissioner, and it appearing, to the satisfaction of the court by said oath that the services of said commissioner therein charged for have been necessarily and actually performed, and no item of said account having been objected to by said U. S. district attorney, who appears for the United States in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant, it is—

Now ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Monday, the sixth day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: Hon. Charles L. Benedict, District Judge.

In the Matter of the Approval of the Account of ASA W. TENNEY, United States District Attorney for the Eastern District of New York.

An account of his fees and services for three months ending September 30th, 1879, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved February 22, 1875, by Asa W. Tenney, duly verified by oath of said Asa W. Tenney, United States district attorney for said district, and it appearing to the satisfaction of this court by said oath that the services therein charged for have been necessarily and actually performed from July 1st, 1879, to September 30th, 1879, inclusive, and no objection appearing to any item of said account, and there being, therefore, no question in regard to the said account presented for determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant, it is now—

Ordered that said account be, and the same hereby is, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT,
U. S. Judge.

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on

Saturday, the tenth day of January, in the year of our Lord one thousand eight hundred and eighty.

Present: Hon. Charles L. Benedict, district judge.

In the Matter of the Approval of the Account of ASA W. TENNEY, United States District Attorney for the Eastern District of New York.

An account of his fees and services for three months ending December 31st, 1879, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved February 22, 1875, by Asa W. Tenney, duly verified by oath of said Asa W. Tenney, United States district attorney for said district, and it appearing to the satisfaction of this court by said oath that the services therein charged for have been necessarily and actually performed from October 1st, 1879, to December 31st, 1879, inclusive, and no objection appearing to any item of said account, and there being, therefore, no question in regard to the said account presented for determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant, it is now—

Ordered that said account be, and the same hereby is, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT,
U. S. Judge.

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 2nd day of July, in the year of our Lord one thousand eight hundred and eighty.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York.

An account of the fees and services of John J. Allen, U. S. commissioner for six months ending June 30th, 1880,

amounting to $764 30/100, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, by A. W. Tenney, Esq., U. S. district attorney, duly verified by the oath of the said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that the services therein charged for have been actually and necessarily performed, and no item of said account having been objected to by said U. S. attorney, who appears for the United States in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is now ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

[SEAL.] CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 4th day of January, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York.

An account of the fees and services of John J. Allen, U. S. commissioner, for six months ending December 31st, 1881, amounting to $627 55/100, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, by A. W. Tenney, Esq., U. S. district attorney, duly verified by the oath of the said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that the services therein charged for have been actually and necessarily performed, and no item of said ac-

count having been objected to by said U. S. Attorney, who appears for the United States in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is now ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 31st day of December, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York.

An account of the fees and services of John J. Allen, U. S. commissioner, for the period ending December 31, 1883, amounting to $1,242.35, having been submitted for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that the services herein charged for have been necessarily and actually performed, and no item of said account having been objected to by the said U. S. district attorney, who appears for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 9th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York.

An account of the fees and services of John J. Allen, U. S. commissioner, for the period ending June 30, 1885, amounting to $544 20/100, having been submitted by M. D. Wilber, U. S. district attorney, for approval, pursuant to the act of Congress entitled "An act regulating fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that the services herein charged for have been necessarily and actually performed, and no item of said account having been objected to by the said U. S. district attorney, who appears for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being in law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the third day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of RICHARD P. MORLE, United States Commissioner for the Eastern District of New York.

An account of fees and services of Richard P. Morle, United States commissioner, for the period ending December 31, 1887, amounting to $380 20/100, having been submitted by Mark D. Wilber, Esq., United States district attorney for said district, for approval, pursuant to the act of Congress entitled "An act to regulate fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of the said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that said services therein charged for have been necessarily and actually performed, and no item of said account having been objected to by said U. S. district attorney, who appears for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant, it is—

Ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held in the United States court-rooms, in the city of Brooklyn, on the 29th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York, for Certain Services, as Stated.

An account of John J. Allen, U. S. commissioner, for certain services rendered in criminal cases during the period ending June 30, 1890, amounting to $206 95/100, having been submitted by John Oakey, Esq., assistant U. S. district attorney, for approval, pursuant to the act of Congress entitled "An act for regulating fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that the services herein charged for have been necessarily and actually performed, and no item of said account having been objected to by the said U. S. district attorney, who appears for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is ordered that the said account be, and the same hereby is, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held in the United States court-rooms, in the city of Brooklyn, on the 27th day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of JOHN J. ALLEN, U. S. Commissioner for the Eastern District of New York, for Certain Services, as Stated.

An account of John J. Allen, U. S. commissioner, for certain services rendered in criminal cases during the period ending June 30, 1892, amounting to $267 75/100, having been submitted by John Oakey, Esq., assistant U. S. district attorney, for approval, pursuant to the act of Congress entitled "An act for regulating fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of said U. S. commmissioner, and it appearing to the satisfaction of the court by said oath that the services herein charged for have been necessarily and actually performed, and no item of said account having been objected to by the said U. S. district attorney, who appears for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for the determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant—

It is ordered that the said account be, and the same hereby is, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge*.

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 6th day of January, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

In the Matter of the Approval of the Account of RICHARD P. MORLE, United States Commissioner for the Eastern District of New York.

An account of fees and services of Richard P. Morle, United States commissioner, for the period ending December

31, 1892, amounting to $227 15/100, having been submitted by John Oakey, Esq., United States district attorney for said district, for approval, pursuant to the act of Congress entitled "An act to regulate fees and costs, and for other purposes," approved Feb. 22, 1875, duly verified by the oath of the said U. S. commissioner, and it appearing to the satisfaction of the court by said oath that said services therein charged for have been necessarily and actually performed, and no item of said account having been objected to by said U. S. district attorney, who appeared for the Government in the matter of the approval of said account, and there being, therefore, no question in regard to said account presented for determination of the court, and the said account being by law subject to revision by the accounting officers of the U. S. Treasury, and my official action herein being limited to the particulars of which I am judicially cognizant, it is—

Ordered that the said account be, and the same is hereby, approved to the above extent, subject to the revision aforesaid.

CHAS. L. BENEDICT, *Judge.*

Endorsements: Court of Claims. U. S. circuit court, eastern district of New York. Certified copies of orders approving accounts. No. 17,349. John J. Allen *vs.* The United States. Claimant's Exhibit "G." C. C. Lancaster, attorney for claimant. Filed Apr. 30, 1897. Court of Claims.

A true copy.
Test.
This 13th day of November, 1906.
[SEAL.]
JOHN RANDOLPH,
Ass't Cl'k, C't of Claims.

[Endorsed:] U. S. circuit court, eastern district of New York. Certified copies of orders approving accounts. Appendix "C."